U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF G-O-B-L-

DATE: NOV. 29, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a business information systems analyst, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is normally attached to this immigrant classification. *See* § 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director, Nebraska Service Center, denied the petition. The Director found that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of a job offer would be in the national interest.

The matter is now before us on appeal. In her appeal, the Petitioner argues that she is eligible for a national interest waiver.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences arts or business. Because this classification normally requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
>
> > (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

> who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
>
> > (i) National interest waiver. . . . the Attorney General[1] may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Matter of New York State Department of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must demonstrate that he or she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, a petitioner's assurance that he or she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. *Id.* at 219. Rather, a petitioner must justify projections of future benefit to the national interest by establishing a history of demonstrable achievement with some degree of influence on the field as a whole. *Id.* at 219, n.6.

II. ANALYSIS

The Director found that the Petitioner holds the foreign equivalent of a U.S. baccalaureate degree in computer science, and has progressive post-baccalaureate experience in her specialty equivalent to an advanced degree under the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B). Accordingly, the Director

[1] Pursuant to section 1517 of the Homeland Security Act of 2002 ("HSA"), Pub. L. No. 107-296, 116 Stat. 2135, 2311 (codified at 6 U.S.C. § 557 (2012)), any reference to the Attorney General in a provision of the Act describing functions that were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA "shall be deemed to refer to the Secretary" of Homeland Security. *See also* 6 U.S.C. § 542 note (2012); 8 U.S.C. § 1551 note (2012).

determined that the Petitioner qualified for classification as a member of the professions holding an advanced degree.[2] The Director further found that the Petitioner's proposed work in the field of business information systems has substantial intrinsic merit. The two findings at issue in this matter are (1) whether the Petitioner established that the benefits of such work are national in scope as required under the second prong of the *NYSDOT* national interest waiver analytic framework, and (2) whether she demonstrated that her past record of achievement is sufficient to meet the third prong.

A. National in Scope

The Petitioner seeks employment in the United States as a business information systems analyst. In a February 2016 letter, she attested to her expertise in applications and other software systems and explained that her "technical skills" and science, technology, engineering, and mathematics (STEM) background "are transferable to complex systems[']' acquisition and implementation." The Petitioner stated that her "IT background is transferrable to different facets of the [IT] arena" and that it "facilitates business processes in IT innovation and sustainability," including "strategic financial, accounting, and auditing processes, and IT security." The record, however, did not include evidence establishing that the benefits of her IT work would extend beyond her employer and its customers such that they will have a national effect. The Director found that the proposed benefit of the Petitioner's work as a business information systems analyst would not be national in scope. *NYSDOT* provided the following examples of meritorious occupations that lack national scope:

> For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

Id. at 217, n.3. On appeal, as evidence of the national scope of her proposed work, the Petitioner refers to a letter from group information and communications technology manager with in Ireland. The Petitioner worked for as an IT business analyst, consultant, and reporting applications developer from September 2005 until July 2013. wrote that the Petitioner developed Structured Query Language (SQL) reporting requirement module and that she lead a project for the company that involved rolling out software to a sister company's operations. With regard to the Petitioner's duties as a business information systems analyst, there is no documentary evidence demonstrating that her work would have implications beyond her

[2] On October 6, 2015, the Petitioner received a Master of Science degree in global financial information systems from in Ireland, but the degree was awarded after she filed the petition.

employer's business operations. While the letter from [redacted] indicated that the Petitioner worked for [redacted] in a meritorious occupation, and thus helped satisfy the first prong of the *NYSDOT* national interest analysis, it did not establish that her IT work produces wider benefits at a national level. As the Petitioner has not demonstrated the national scope of her work as a business information systems analyst, we uphold the Director's finding that she does not meet the second prong of the *NYSDOT* national interest analysis.

B. Serving the National Interest

It remains, then, to determine whether the Petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. The Director determined that the Petitioner's impact and influence on her field did not satisfy the third prong of the *NYSDOT* national interest analysis.

The Petitioner submitted six letters of support, two of which were from [redacted] In his letters, [redacted] described the Petitioner's work for [redacted] as a reporting applications developer, business analyst, and IT consultant. He noted the Petitioner's experience in data security operations, AS/400 systems, SQL, [redacted] Microsoft Office, and Oracle software. Any claim that a petitioner possesses useful skills or a "unique background," however, relates to whether similarly trained workers are available in the United States and is an issue under the jurisdiction of the U.S. Department of Labor through the labor certification process. *See NYSDOT*, 22 I&N Dec at 221. [redacted] also discussed the Petitioner's role in projects such as upgrading [redacted] SQL, implementing [redacted] software in a sister company's operations, automating a payee control system, developing a module allowing "customer service to enter customer orders for a real time interface with [redacted] and creating a data analysis report that analyzed the company's daily business transactions. While [redacted] indicated that the Petitioner performed important IT services for [redacted] there is no evidence showing that the Petitioner's work has affected practices elsewhere in the business information systems industry or has otherwise had a degree of influence on the field as a whole.

In another letter, [redacted] a lecturer and researcher in business information systems at [redacted] stated that he found the Petitioner "to be a diligent, hard-working, committed and honest student, who always brought her significant industry experience to bear on group projects and class discussions." Furthermore, [redacted] noted that [redacted] master's degree program in global financial information systems had "over 300 applications for the 20 seats" in the year the Petitioner applied and that the program is "very intensive and demanding." Academic performance alone does not meet the requirements for a national interest waiver. The Petitioner must still demonstrate specific prior achievements in the field that establish her ability to benefit the national interest. *See NYSDOT*, 22 I&N Dec. at 219, n.6.

[redacted] also mentioned that the Petitioner "played a leading role in her project team, modelling and designing an innovative mobile payment system, which I use today as an exemplar for our current students." The record does not include evidence to establish, however, that the mobile

payment system modelled and designed by the Petitioner and her classmates at has been widely utilized outside of classroom, has been adopted by a substantial number of retailers, or has otherwise affected the field of business information systems as a whole.

the Petitioner's supervisor at from 1993 to 2002, discussed the Petitioner's job responsibilities for the company. He indicated that these responsibilities included security control, financial systems programming, technical solutions development, and Y2K error debugging, but he did not provide any examples of how the Petitioner's work has influenced the field as a whole. In addition, now an IT solutions project manager for stated that she worked with the Petitioner at until 1999. In the same manner as described the Petitioner's projects as a security officer, technical member of the migration team, systems analyst, disaster recovery plan developer, and Y2K compliance tester. While and noted that the Petitioner performed her job responsibilities effectively, they did not indicate that her work has impacted the IT industry beyond or has otherwise influenced the field as a whole.

Lastly, a program manager for a charitable organization in Minnesota, stated that the Petitioner served as a volunteer for the charity's program for the past two years, performing duties such as stocking shelves and assisting clients with their shopping. did not indicate that the Petitioner's work for relates to business information systems or has affected that field.

In this matter, the Petitioner has not established by a preponderance of the evidence that she has a past record of demonstrable achievement with some degree of influence on the field as a whole or that she will otherwise serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. Accordingly, we uphold the Director's determination that the Petitioner has not met the third prong of the *NYSDOT* national interest analysis.

III. CONCLUSION

The Petitioner has not shown that a waiver of the job offer requirement will be in the national interest of the United States. Accordingly, she has not established eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

ORDER: The appeal is dismissed.

Cite as *Matter of G-O-B-L-*, ID# 99722 (AAO Nov. 29, 2016)